

**FILED JANUARY 26, 2011**

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case Nos.: <b>04-O-10977-RAP</b> (04-O-14691;
	)	04-O-15317; 05-O-00192;
<b>SAYEH AYAZI KHOEI,</b>	)	05-O-01256; 05-O-02244);
	)	04-O-11765 (Cons.)
<b>Member No. 153814,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
A Member of the State Bar.	)	<b>CERTAIN DOCUMENTS</b>
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**I. Introduction**

In this original disciplinary proceeding, respondent **Sayeh Ayazi Khoei** was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has found that respondent successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that she be placed on probation for three years subject to certain conditions, including that she be suspended from the practice of law for the first six months of probation, with credit given for the period of inactive enrollment which was effective April 30, 2009 through November 22, 2010. (Bus. & Prof. Code, §6233.)

## **II. Pertinent Procedural History**

On June 13, 2005, a Notice of Disciplinary Charges (NDC) was filed against respondent in case No. 04-O-11765. Thereafter, on September 27, 2005, another NDC was filed against respondent in case No. 04-O-10977. The matters were originally assigned to the Honorable JoAnn M. Remke.

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist her with her mental health issues on November 17, 2005.

On December 5, 2005, the court filed an order in case Nos. 04-O-11765 and 04-O-10977. In that order the court granted the State Bar's motion to dismiss case No. 04-O-10977 without prejudice to the State Bar to add new charges and referred case No. 04-O-11765 to the State Bar's Alternative Discipline Program (ADP) before the undersigned judge.

On January 23, 2006, a Notice of Disciplinary Charges was filed in case Nos. 04-O-10977 (04-O-14691; 04-O-15317; 05-O-00192; 05-O-01256; 05-O-02244). On February 22, 2006, the court issued an order consolidating case Nos. 04-O-10977 et al. with case No. 04-11765.

On April 7, 2006, respondent executed Participation Plan with the LAP. And, in May 2006, the court received a psychiatric evaluation of respondent from Ali M. Azizi, M.D. and respondent's Nexus Declaration Statement. Respondent also submitted a First Amended Nexus Statement, which the court received on October 29, 2008. Respondent's declarations and the evaluation from Dr. Azizi established a nexus between respondent's mental health issues and her misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in October 2008. The Stipulation sets forth the factual findings, legal conclusions, and mitigating

and aggravating circumstances in this matter. And, in December 2008, the court received the parties' briefs as to discipline.

On April 30, 2009, the court executed an order approving the Stipulation Re Facts and Conclusions of Law, which the parties had entered in October 2008. The Stipulation and the order approving the Stipulation were filed on May 6, 2009.

The court also issued a Confidential Statement of Alternative Dispositions and Orders dated April 30, 2009,<sup>1</sup> formally advising the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP, and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on April 30, 2009.<sup>2</sup> In addition, respondent's period of inactive enrollment pursuant to Business and Professions Code section 6233 began on April 30, 2009, and was terminated effective November 23, 2010.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On November 23, 2010, after having received a Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health regarding respondent, the court filed an order finding that respondent has successfully completed the ADP. The court also indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in the Statement.

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<sup>1</sup> The court lodged its Confidential Statement of Alternative Dispositions and Orders on May 6, 2009.

<sup>2</sup> On May 6, 2009, the court filed an order formally reflecting that respondent was accepted into the ADP, and that her participation in the ADP commenced on April 30, 2009.

### **III. Findings of Fact and Conclusions of Law**

The Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if set forth fully herein. In this consolidated matter involving seven clients, respondent stipulated that she: (1) intentionally, recklessly or repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California [five client matters];<sup>3</sup> (2) failed to report to the State Bar, in writing, the entry of judgment against her in a civil action for malpractice and breach of fiduciary duty within 30 days of the time she had knowledge of the judgment, in willful violation of Business and Professions Code section 6068, subdivision (o)(2)<sup>4</sup> [one client matter]; (3) failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to her client in violation of rule 3-700(A)(2) [two client matters]; (4) failed to communicate with a client in violation of section 6068, subdivision (m) [six client matters]; (5) failed, upon termination of employment, to release promptly to a client, at the client's request, all of the client's papers and property in violation of rule 3-700(D)(1) [three client matters]; and (6) failed to pay or deliver, as requested by the client, funds in the possession of respondent, which the client was entitled to receive in violation of rule 4-100(B)(4) [one client matter].

The parties also stipulated to certain aggravating and mitigating factors in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>5</sup> stds. 1.2(e) and (b).) In aggravation, respondent's current misconduct evidences multiple acts of misconduct

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<sup>3</sup> Unless otherwise indicated, all further references to rule(s) are to refer to the Rules of Professional Conduct of the State Bar of California.

<sup>4</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>5</sup> All further references to standard(s) or std. are to this source.

(std. 1.2(b)(ii)); her misconduct in case No. 05-O-00192 involved trust funds (std. 1.2(b)(iii)); and, respondent's misconduct significantly harmed a client (std. 1.2(b)(iv)).

In mitigation, respondent has no prior record of discipline since her admission to the practice of law in July 1991. (Std. 1.2(e)(i).) She also displayed spontaneous cooperation and candor with the State Bar during the ADP proceedings, an additional mitigating factor (std. 1.2(e)(v)). Furthermore, the extreme emotional difficulties suffered by respondent at the time of the misconduct, and her successful completion of the ADP warrant additional consideration in mitigation. (Std. 1.2(e)(iv).)

#### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.2, 2.4, 2.6 and 2.10, and the case law cited in the parties' briefs, including *Young v. State Bar* (1990) 50 Cal.3d 1204, *Hawes v. State Bar* (1990) 51 Cal.3d 587, and *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. The court also found the following cases to be instructive *Howard v. State Bar* (1990) 51 Cal.3d 215 and *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

Because respondent has successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Statement.

## **V. Recommendations**

### **A. Recommended Discipline**

It is hereby recommended that respondent **Sayeh Ayazi Khoei**, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that she be placed on probation<sup>6</sup> for a period of three years subject to the following conditions:

1. Respondent must be suspended from the practice of law for the first six months of her probation with credit given for the period of inactive enrollment which was effective April 30, 2009 through November 22, 2010 (Bus. & Prof. Code, § 6233);

2. Respondent must also comply with the following additional conditions of probation:

- a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
- b. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
- c. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
- d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding

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<sup>6</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

calendar quarter. Respondent must also state whether there are any proceedings pending against her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session;
- g. Respondent must comply with all provisions and conditions of her Participation Agreement/Plan with the LAP and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or conditions(s) of her Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.
- h. Respondent must pay restitution to Susan Reitman in the amount of \$4,188.65 plus 10% interest per annum from February 9, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Susan Reitman, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to Susan Reitman as set forth above.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by her during that quarter or applicable reporting period;

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the Office of Probation;

- i. Within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must send a letter by certified mail, return receipt requested, to each of the individuals set forth below and must therein offer to initiate and participate in State Bar binding fee arbitration with said individuals, upon the request of any such individual, regarding respondent's fees charged for representation of the individuals set forth below, unless respondent has previously sent such a written offer to these individuals.

- i. Afshin Rahmani
- ii. Nadar Nassim Sabhan

Within sixty (60) days after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide the Office of Probation with a copies of each of the letters offering to initiate and participate in State Bar binding fee arbitration with the above-listed individuals, along with copies of the return receipts from the U.S. Postal Service or other proof of mailing, unless respondent has previously provided proof of mailing or receipts of such letters to the Office of Probation.

Respondent must advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any of the above individuals within fifteen (15) days after any such request or within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, whichever is later, unless respondent has previously advised the Office of Probation of such a request.

Respondent must initiate and participate in State Bar binding fee arbitration upon the request of any of the above individuals within three (3) months of any such request or as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to any fee arbitration with the above individuals. Respondent waives the expiration of any time to resolve this dispute by fee arbitration.

Within thirty (30) days after issuance of any award, decision or final determination by any fee arbitrator pursuant to any such fee arbitration, or within thirty (30) days after the effective date of the Supreme Court's final



disciplinary order in this matter, whichever is later, respondent must provide a copy of said award, decision or final determination to the Office of Probation, unless respondent has previously done so.

Respondent must abide by any final award, order, decision or final determination of any such fee arbitrator. Unless respondent has previously provided to the Office of Probation satisfactory proof of compliance with any award, decision or final determination of any such fee arbitrator, respondent must provide, with each quarterly report required herein, satisfactory proof of compliance with any award, decision or final determination of any such fee arbitrator performed by respondent during said quarter or applicable reporting period.

If the State Bar Client Security Fund has reimbursed any of these individuals for all or any portion of any award pursuant to fee arbitration, respondent must pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5, unless she has previously done so. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

To the extent that respondent has paid any fee arbitration award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.<sup>7</sup>

- j. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation ("accountant's certificate"), certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account;" and, respondent has kept and maintained the following:
  - i. a written ledger for each client on whose behalf funds are held that sets forth:
    - 1. the name of such client,
    - 2. the date, amount, and source of all funds received on behalf of such client,
    - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and
    - 4. the current balance for such client;
  - ii. a written journal for each client trust fund account that sets forth:

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<sup>7</sup> Failure to comply with the fee arbitration requirements set forth above may constitute a violation of this condition of probation and could result in further disciplinary proceedings.

1. the name of such account,
2. the date, amount, and client affected by each debit and credit, and
3. the current balance in such account;
- iii. all bank statements and canceled checks for each client trust account; and
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:
  1. each item of security and property held;
  2. the person on whose behalf the security or property is held;
  3. the date of receipt of the security or property;
  4. the date of distribution of the security or property; and
  5. the person to whom the security or property was distributed.

If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct of the State Bar of California.

- k. Unless, within the period of her ADP participation, respondent provided to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School and passage of the test given at the end of that session, within one (1) year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

**B. Multistate Professional Responsibility Examination**

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

**C. California Rules of Court, Rule 9.20**

The court does not recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, because she previously complied with rule 9.20 in connection with her inactive enrollment under Business and Professions Code section 6233.

**D. Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**VI. Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(C) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),<sup>8</sup> all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when

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<sup>8</sup> On January 1, 2011, new Rules of Procedure became effective.

necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: January 25, 2011.

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RICHARD A. PLATEL  
Judge of the State Bar Court